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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Policies and Rules Concerning )  
Children's Television Programming )MM Docket No. 93-48Revision of Programming Policies )  
for Television Broadcast Stations )

## COMMENTS OF

CENTER FOR MEDIA EDUCATION, AMERICAN  
ASSOCIATION OF SCHOOL ADMINISTRATORS,  
ASSOCIATION FOR LIBRARY SERVICE TO  
CHILDREN/AMERICAN LIBRARY ASSOCIATION,  
CENTER FOR THE STUDY OF COMMERCIALISM, PEGGY  
CHARREN, CONSUMER FEDERATION OF AMERICA,  
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ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS,  
NATIONAL ASSOCIATION FOR FAMILIES AND  
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## SUMMARY

The Center for Media Education and the other groups and individuals filing with us are pleased that the Commission has opened this inquiry into broadcaster compliance with the Children's Television Act of 1990. We endorse the Commission's tentative factual findings, as described in the Notice of Inquiry, and agree that the Commission should adopt its proposed "core" programming definition and a processing guideline. These measures, with some modifications and additional steps by the Commission, should greatly increase the effectiveness of the Children's Television Act and simplify enforcement of the Act through the license renewal process.

In particular, we agree that "core" programming should be further defined as standard-length programming specifically and primarily designed to educate and inform children. In addition, we propose that only regularly-scheduled programming aired between 7:00 a.m. and 10:00 p.m. should count as "core" programming. Finally, we suggest that the Commission clarify its definition of "educational," to help alleviate broadcaster confusion over what kinds of programs qualify under the Act. These changes should assist licensees in meeting their obligations, as well as simplify the Commission's review of each licensee's performance during the renewal process.

We endorse the Commission's suggestion that it adopt a staff processing guideline in this area, which would also facilitate the renewal review process. We recommend that only "core"

programming count toward the processing guideline. "Other" programming, such as general-audience shows, public service announcements, "interstitials," nonbroadcast efforts and the like need only be examined if a station is unable to meet the guideline, and is referred for a full-scale review. This method will permit the Commission to devote its limited resources to investigating only the stations which deserve a closer look, while encouraging broadcaster compliance with the law and preserving their programming independence.

We further recommend that the processing guideline be set at one hour a day of "core" programming, for a total of seven hours each week. One hour a day of educational television is not too much, considering the amount of time children spend in front of the set. We believe that the Commission has ample authority to utilize a processing guideline.

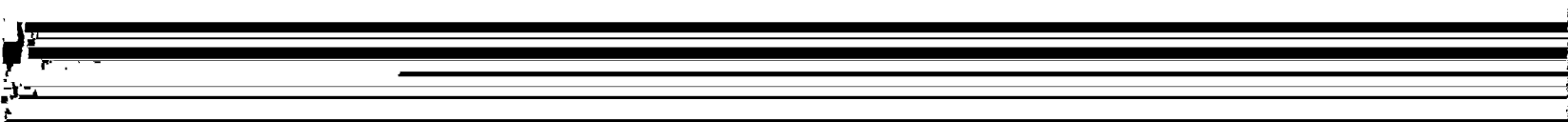
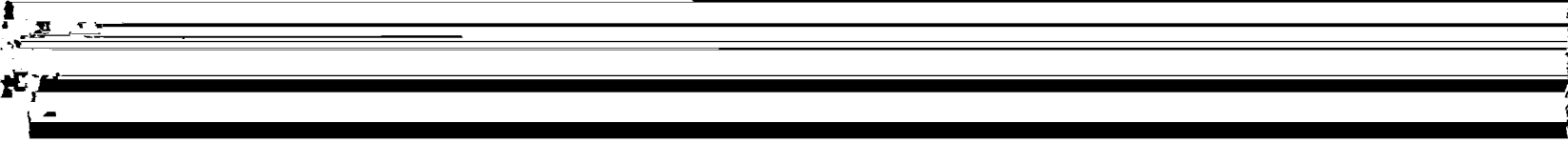

We also ask that the Commission modify its reporting requirements to facilitate implementation of the "core" programming approach. We suggest three changes. The Commission should require stations 1) to clearly identify "core" programs in their regular children's programming reports; 2) to indicate the educational objective of each program they claim as educational or informational; and 3) to report the actual number of hours of "core" programming they broadcast each day and/or each week.

In addition, we strongly suggest that broadcasters target their "core" programming to specific age groups and identify the target age group for all educational programs for children in

their program descriptions. This information is necessary so that both the Commission and the public can accurately monitor licensee compliance with the Act. If, after a year, the Commission finds that some age groups are not being adequately served, it should take further action to ensure that all age groups of children have educational programming available to them.

Finally, we urge the Commission to increase public participation in the licensing process by updating The Public and Broadcasting -- A Procedure Manual, which all licensees must keep in their public files, and by amending stations' license renewal announcements to include information about the broadcasters' obligations to children.

Adopting these important proposals will help make the Act's promise of educational television for all of our children become a reality. Although the broadcast industry has recently announced new educational programs, it is obvious that these



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COMMENTS OF  
CENTER FOR MEDIA EDUCATION, et al.

Center for Media Education, American Association of School Administrators, Association for Library Service to Children/American Library Association, Center for the Study of Commercialism, Peggy Charren, Consumer Federation of America, Council of Chief State School Officers, Dr. Vincent Hutchins, MD, MPH, National Association for Better Broadcasting, National Association of Child Advocates, National Association of Elementary School Principals, National Association for Families and Community Education, the National Black Child Development Institute, Inc., National Council of La Raza, National Education Association, and National PTA,<sup>1</sup> hereby submit the following comments by their attorneys, the Institute for Public Representation, in response to the Notice of Inquiry (hereinafter "Notice") in the above-captioned proceeding released March 2, 1993.

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<sup>1</sup> The interests and mission of each group and individual co-signer are described in Appendix B-1. They are collectively referred to hereafter as CME et al.

CME et al. commend the Commission for initiating this much-needed proceeding to clarify licensees' obligations under the Children's Television Act of 1990.<sup>2</sup> We agree with the Commission's tentative findings and endorse the two proposals described in the Notice, with some changes and additions as described below.

We agree that the Commission should look primarily to "core" programming in determining whether a licensee has met its obligations under the CTA, and that a staff processing guideline should be established to help evaluate a licensee's compliance with the Act. Notice at ¶¶ 8, 9. We also agree that "core" programming should be defined as standard-length and regularly-scheduled programming that is specifically and primarily designed to educate rather than merely to entertain children. Id. at ¶8.

In addition, we recommend that the Commission clarify its current definition of "educational," and that it examine whether age-appropriate programs are being offered for all age groups, and whether they are presented when the targeted audience is likely to be watching. Finally, we propose that the Commission adjust broadcasters' reporting requirements to reflect its new priorities and to facilitate public monitoring of broadcaster compliance with the Act. We also ask that the Commission update its handbook, The Public and Broadcasting-- A Procedure Manual,

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<sup>2</sup> Children's Television Act of 1990, 47 U.S.C.A. §§ 303a & 303b) (1993 West Supp.) (hereinafter "CTA").



and that it require broadcasters to include information about their obligations to children in on-air renewal announcements.

These steps will go a long way toward ensuring that the promise of the CTA is achieved. Taking these actions will also assist broadcasters in meeting their obligations, and make them more accountable to Commission staff and the viewing public.

**I. Children's Educational Television Programming Has Improved Little Since the Passage of the Children's Television Act of 1990.**

CME et al. share the Commission's concern as to whether the passage of the Children's Television Act has actually improved children's television programming. In particular, CME welcomes the opportunity to present its independent findings on this issue. As the Commission may be aware, last September CME and the Institute for Public Representation jointly analyzed a sample of stations' responses to the mandate of the Act, releasing our findings as A Report On Station Compliance With the Children's Television Act.<sup>3</sup> Both the PTA and the NEA endorsed the Report.

We find that most of the Notice's observations are consistent with our experience in this area, and that many of the specific problems which the Commission recognizes in its Notice

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<sup>3</sup> CME/IPR, A Report on Station Compliance With the Children's Television Act, (September 29, 1992) (hereinafter "Report"). A copy is attached to these comments.

The sample examined in the Report consisted of license renewal applications of 58 commercial stations filed at the FCC between February and August 1992. The stations represented fifteen different markets in Arkansas, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Ohio, and Tennessee. These were the first eight states where stations were required to file under the provisions of CTA.

were also raised in the Report.<sup>4</sup> The Notice suggests that broadcasters have not significantly increased the amount of standard-length, regularly-scheduled educational and informational programming. Notice at ¶6. The Notice also states that some licensees are claiming credit for airing child-oriented cartoons such as "The Flintstones" under the rubric of "pro-social" educational programming. Notice at ¶6. Our findings agree.

Overall, we found that most broadcasters have not increased the number of hours which they devote to educational programming for children. It appeared that many stations in our survey averaged only one half-hour or less per week of educational programming for children. We also found that adding up the actual or average hours presented each week and comparing the applications in any systematic way was very difficult, because the format of the applications varied so widely.<sup>5</sup> See Report at

"specifically designed" educational programs separately from their general-audience programming.<sup>6</sup>

CME also found that surprisingly few new shows have been developed and aired. See Report at 4-5 (citing 5 "FCC compliance shows"). Rather than presenting programs designed to educate and inform children, as the law mandates, many stations are recycling old entertainment programming, and working hard to come up with new descriptions to make them "sound" educational. While some general audience programming legitimately can help educate children, as the CTA recognizes, many stations in our survey listed programs completely lacking in any educational content. See id. at 9. In addition, many licensees which we reviewed characterized animated entertainment programs such as "GI Joe" and "Bucky O'Hare" as educational. Report at 5-7. Although these programs may have been "specifically designed" for children, they were clearly not designed to educate children.

CME also found that the vast majority of the educational programming listed in renewal applications fell into the vague category of "pro-social" programming. Report at 8 and Appendix. These programs do not teach math, science, or vocabulary skills. Children who need help in these areas are woefully underserved by current broadcast offerings.<sup>7</sup>

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<sup>6</sup> See Report at 3. The Act clearly requires that at least some "specifically designed" educational programming be aired. CTA § 103(a)(2), 47 U.S.C.A. §§ 303b(a)(2).

<sup>7</sup> Congress and the Commission intended that licensees serve children's cognitive/intellectual needs as well. See Report and Order, Policies and Rules Concerning Children's Television

Since the publication of the Notice, articles about new educational programs for children have begun to appear in the broadcast industry trade press.<sup>8</sup> The Commission should not be fooled by this spate of enthusiasm. There is no guarantee that the stations will actually follow through and live up to the mandate of the law.<sup>9</sup> The Commission must take immediate further action to ensure that the problems related above are addressed.

The purpose of the CTA was to increase the amount of educational and informational programming on the air.<sup>10</sup> Unfortunately, it has not done so. It is evident from both CME's Report and the Commission's internal review that most licensees do not take the CTA seriously and freely disregard its mandate.

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Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 6 FCC Rcd 2111, 2114 (1991) ("April Order"); 136 Cong. Rec. S10122 (daily ed. July 19, 1990) (statement of Sen. Inouye).

<sup>8</sup> See, e.g., Mike Freeman, 'Beakman' moves to CBS, Broadcasting and Cable, Mar. 22, 1993, at 21; Mapping Out Kids Schedules, Broadcasting & Cable, April 19, 1993 at 10 (listing both network and syndicated shows); Bill Nye is BTV's Educational Guy, Broadcasting & Cable, April 26, 1993 at 47.

<sup>9</sup> The Commission asks whether a "supply shortage" of quality educational children's television programming exists. This concern is unfounded. There are new educational shows waiting to be sold to licensees. For example, "Beakman's World", a show that teaches science in an entertaining style, has recently been picked up by CBS for its Saturday schedule. See, e.g., Mike Freeman, 'Beakman' moves to CBS, Broadcasting and Cable, Mar. 22, 1993, at 21; Mapping Out Kids Schedules, Broadcasting & Cable, April 19, 1993 at 10 (listing both network and syndicated shows); As in any other area, increased demand will result in increased supply.

<sup>10</sup> Children's Television Act of 1990, Pub. L. No. 101-437, 101st Cong. 1st Sess. (codified at 47 U.S.C. § § 303a & 303b).

Clearly, the CTA was not intended merely to create a pile of paper which recategorizes existing entertainment programs as "educational." On the contrary, it was intended to encourage the creation of quality educational programs and to reward broadcasters who aired them by renewing their valuable licenses.

We believe that the promise of the CTA could be realized if the Commission adopts the two proposals made in the Notice and implements the additional suggestions detailed below. We hope that the Commission's inquiry will send a clear signal to broadcasters that noncompliance with the CTA and its implementing regulations will no longer be tolerated.

## **II. The Concept of "Core" Programming is Fundamentally Sound and Consistent With Congressional Intent**

In the Notice, the Commission has proposed that broadcasters place primary reliance on "core" programming to meet their obligations under the Act. Notice at ¶8. It further proposes to define "core" programs as standard-length programs that are primarily designed to educate and inform rather than entertain.

Id. CME et al. urge the Commission to begin immediately to examine whether licensees have provided sufficient core programming, under the "specifically designed" requirement of the Act. CTA § 103(a)(2), 47 U.S.C.A. § 303b(a)(2). Such an approach would permit the Commission to eliminate dubious claims, such as those noted above, and to assess whether broadcasters are meeting their mandate to air "specifically designed" educational programming.

**A. Qualifying "Core" Programs Should be Defined as Programs Specifically and Primarily Designed to Educate and Inform Children.**

The Commission should craft a clear definition of "core" programming to eliminate broadcaster confusion over how to comply with the mandate of the CTA. CME et al. agree with the Notice that:

broadcasters should focus on programming that has as its explicit purpose service to the educational and informational needs of children, with the implicit purpose of entertainment, rather than the converse.

Notice at ¶8 (emphasis in original). This approach is consistent with Congressional intent to increase the amount of educational and informational programming available to children. See, e.g., S. Rep. No. 227, 101st Cong., 1st Sess. 1, 22 (1989) (hereinafter Senate Report).

We also agree that a "core" programming definition would eliminate "misplaced reliance by licensees on entertainment programming that is asserted to be informational or educational based principally on a 'wrap-around' pro-social message." Notice at ¶8. At a recent congressional hearing on compliance with the CTA, Shari Lewis eloquently summed up the problem with reliance on "wrap-around" pro-social programming:

A violent superhero who may step forward at the end of a show to make nice and say something pro-social is still someone who solves problems with his fists. One minute of pro-social preaching does not undo a full half-hour of violent teaching.<sup>11</sup>

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<sup>11</sup> Oversight Hearing on the Implementation of the Children's Television Act of 1990: Hearings Before the House Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong., 1st Sess. (1993) (statement of Shari

Such pro-social messages cannot take the place of programming that is primarily designed to educate and inform children. Adopting a "core" definition will allow the Commission to encourage more of the programs that benefit children the most, i.e., those which are primarily designed to educate.

**B. The Definition of "Educational and Informational" Should Be Clarified to Provide More Guidance to Broadcasters**

While the Commission's proposal to define "core" programming is a useful first step, it does not address problems created by the overly broad definition of "educational and informational" which the Commission adopted in 1991. We propose that the Commission adopt a more precise definition of this term as it is used in the CTA.

The Commission currently defines "educational and informational" programming as

any television programming which furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs.

47 C.F.R. § 73.671 note (1992) (emphasis added).<sup>12</sup>

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Lewis) (hereinafter Lewis Testimony).

<sup>12</sup> The Commission derived this definition from two sources: 1) a statement on the Senate floor by Senator Inouye, defining educational shows as "Programming which furthers a child's intellectual, emotional and social development." 136 Cong. Rec. S10122 (daily ed. July 19, 1990) (statement of Sen. Inouye), and 2) comments filed by the McGannon Center, defining an educational program as a program "that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs." April Order, 6 FCC Rcd at 2114 & n. 75; see also Children's Television Reconsideration Order, 6 FCC Rcd 5093, 5101 (1991) (hereinafter "August Order").

This definition fails to provide sufficient guidance to broadcasters. As noted above, broadcasters have stretched it to the breaking point in order to claim that shows such as the "Jetsons," "Leave it to Beaver," or "G.I. Joe" are educational. Report at 7 & n. 19; see also George Jetson, Teacher, U.S. News & World Report, Oct. 12, 1992, at 17. While it may be true that some broadcasters are not acting in good faith, others may be misled or uncertain because of the vagueness of the Commission's definition.

Narrowing this definition is essential to assure that programs labeled "educational" really are educational. At the very least, the Commission should delete the phrases "positive development" and "in any respect." Almost any program could be said to further the positive development of children in some way, but that does not mean that the program actually teaches them anything. Even "non-core" programming must relate to "the educational needs of children," under the plain language of the Act. CTA § 103(a)(2), 47 U.S.C.A. § 303b. We also suggest incorporating a good faith requirement by adding the term "genuinely," to ensure that educational claims are legitimate.

We also propose that the definition be clarified to include examples of educational and informational programming. In its 1974 Policy Statement, the Commission urged broadcasters to provide educational programming, explaining that programming designed to educate and inform need not mean "hours of dull 'classroom' instruction." Children's Television Report and



Policy Statement, 50 F.C.C. 2d 1, 6-7 (1974) (hereinafter "1974 Policy Statement"):

There are many imaginative and exciting ways in which the medium can be used to further a child's understanding of a wide range of areas: history, science, literature, the environment, drama, music, fine arts, human relations, other cultures and languages, and basic skills such as reading and mathematics which are crucial to a child's development.

Id. This list of educational topics was intended to assist broadcasters in understanding what the Commission meant by educational programming almost twenty years ago.

Similarly, the Commission can provide guidance to licensees today by adding similar examples. We suggest amending the current definition along the following lines:

Educational and informational television programming is television programming that genuinely furthers the understanding of children sixteen years of age and under of subjects such as history, science, literature, the environment, drama, music, fine arts, current events, human relations, other cultures, or languages, and of skills such as reading and mathematics which are crucial to a child's development.

Clarifying the existing definition to eliminate vagueness and include a range of examples would give helpful guidance to broadcasters without limiting their creativity in any way. Adopting this clarification would also make it easier for the Commission to determine whether licensees are meeting their obligations under the CTA. As noted above, the definition would serve to identify not only "core" programming, but also any "overall" or "general audience" programming claimed as educational under the CTA. Thus, the clarification would further the fundamental purpose of the CTA -- to increase the

availability of all educational and informational programming for children.

C. "Core" Programs Should be Standard-Length, Regularly-Scheduled, and Aired Between 7:00 a.m. and 10:00 p.m.

CME et al. agree with the Notice that only standard-length programs should be counted as "core" programs. Notice at ¶8. The Commission defines standard-length programming as at least thirty minutes long. Notice at ¶6 & n.12. In the Notice, the Commission proposes that:

broadcasters should place their primary reliance in establishing compliance with the CTA on standard-length programming that is specifically designed to serve the educational and informational needs of children, and should accord short-segment programming secondary importance in this regard.

Notice at ¶8 (emphasis added).

The Commission has already stated that broadcasters must air some standard-length programs in order to comply with the Act. August Order, 6 FCC Rcd 5093, 5101 (1991). Requiring that "core" programming be standard-length merely makes it clear that primary reliance should be on this form of programming.

The Commission's proposal is consistent with congressional intent. The fact that virtually all of the shows listed in the legislative history as good examples of educational programs are thirty minutes or longer shows that Congress intended that primary reliance be placed on standard-length programming. Senate Report at 5-8.

Placing greater reliance on standard-length programming will also result in a greater educational benefit to children. The

American Psychological Association (APA) has cited a "wealth of scientific data" showing that standard-length programming is preferable to short-segment programming or public service announcements:<sup>13</sup>

Research indicates that even very young children are capable of maintaining extended attention to television . . . . One of the most interesting and potentially useful findings . . . [in this area] has been labeled 'attentional inertia' . . . [:] the longer a child's attention is held to the screen (by content that is comprehensible . . . ), the greater the probability the child will continue to maintain attention. This evidence demonstrates clearly that more extended "lessons" can be presented on television to benefit even the youngest child-viewers.

APA Pet. for Recon. at 6-8 (citations omitted). Thus, children can obtain greater educational benefits from standard-length programs than from short-term programming or public service

In addition, we urge that "core" programming be interpreted to mean regularly-scheduled educational programming. Regularly-scheduled programs are on at the same time each day or week. Children are more likely to watch regularly-scheduled programs because they know where to find the program even without looking at a television guide. For example, even very young children know when "Sesame Street" is on. Children should be able to know when the shows they are interested in are scheduled, just as adults know that if they turn on the television at 6:00 p.m., they will be able to watch the news.

By regularly scheduling programs, it is easier to develop an audience. If educational programs are to be given a chance to find and retain the child audience, they must be aired in regularly-scheduled time slots. CME found that some educational programs were frequently shifted around. Report at 5 (citing example of educational program aired at three different times during a sixteen week period). While broadcasters are free to air educational programs that are not regularly-scheduled, we urge that only regularly-scheduled programming be counted as "core" programming.



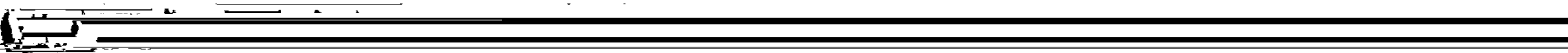


In addition to standard-length, regularly-scheduled programming, we recommend that only programs aired between 7 in the morning and 10 at night should count as "core" programming.<sup>14</sup> Since the purpose of the CTA is to increase

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<sup>14</sup> Our proposal is less restrictive than an earlier FCC proposal to count only educational programs for children aired between 8:00 AM and 8:00 PM on Monday through Friday. See Notice

programming which meets children's needs, it makes no sense to credit broadcasters for programs that are aired at hours when most children do not watch television.

Research shows that children watch television mostly during the daytime and the prime-time evening hours. As NAB researcher, Richard Ducey noted in the 1989 hearings on the Act, "relatively little of [children's] total viewing occurs during the Saturday





presumed to meet the criteria for renewal. Notice at ¶9. Stations below this threshold would have to demonstrate that they nonetheless fulfilled their obligations to their child audience. See Notice at ¶9. Of course, every station must air "some" programming specifically designed to serve the educational and informational needs of children. CTA § 103(a)(2), 47 U.S.C.A. § 303b(a)(2).

**A. Implementation of a Processing Guideline Would Greatly Improve the License Renewal Process.**

CME et al. support the proposal to use processing guidelines for two reasons. First, adopting a processing guideline should facilitate license renewal review by providing staff with a benchmark against which to measure broadcaster compliance with the CTA. It would permit the Commission to focus its limited resources on licensees that require closer scrutiny by examining their applications in detail, while at the same time rewarding licensees that provide a substantial level of educational programming by promptly renewing their licenses.

Second, we agree with the Notice that providing clearer guidance should assist licensees in selecting appropriate programming and produce measurably higher levels of compliance with the CTA. See Notice ¶9. As with advertising limits, providing clear and unambiguous criteria seems to encourage compliance. Notice at ¶7 & n.14 (noting 94% compliance rate for advertising limits). Adopting equivalent criteria in the educational area should similarly assist broadcasters in meeting their programming obligations.

The Commission could adopt a processing guideline without going through a notice and comment rulemaking process. Under the Administrative Procedure Act, 5 U.S.C. § 553, such a decision would be exempt under § 553(b)(A) because it simply governs internal agency procedures. Changing internal agency procedures in this manner would not alter the rights of any party. See Batterton v. Marshall, 648 F.2d 694, 707 (D.C. Cir. 1980). The Commission has adopted processing guidelines in the past without a notice and comment rulemaking process.<sup>16</sup> It can follow the same procedure today.

As for how the guideline should work, we agree with the Commission's suggestion that only standard-length educational and informational programming should "count." Notice at ¶9. However, the Notice leaves open the issue of whether the proposed guideline should include only "core" programming, or whether "other" shows, e.g., "family programming or children's entertainment programming with a secondary educational theme" should also qualify.<sup>17</sup> We strongly urge the Commission to

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<sup>16</sup> See Order, In the Matter of Amendment of Part O of the Commission's Rules - Commission Organization - With Respect to Delegations of Authority to the Chief, Broadcast Bureau, 43 FCC 2d 638 (1973) (hereinafter "Delegation of Authority Order"); 47 C.F.R. § 0.281(8)(i)(1973).

<sup>17</sup> The Notice asks how and whether the guideline should be



consider only "core" programming in determining whether the processing guideline has been met. By simultaneously suggesting a numerical guideline and clarifying that only "core" programming will "count" toward the guideline, the Commission will clearly encourage such programming and make the processing guideline simple to administer.

The broadcast of additional "non-core" programming, such as family-oriented shows, should not affect the processing guideline in any way, nor should factors such as program quality or nonbroadcast efforts. See Notice at ¶9. Attempting to account for such variables will merely perpetuate the existing confusion and defeat the purpose of the new guideline by making it almost as subjective as the existing system. If broadcasters could reach the numerical limit by adding together any and all "educational moments" in their general audience programming, 30-second public service announcements, and "pro-social" child-oriented entertainment shows, the new guideline would merely reinforce the status quo. Simplicity is what is needed, not a complicated set of sliding scales.

Indeed, one of the benefits of the "core" approach is that it avoids the need for Commission staff to evaluate program content or to rank shows according to their quality. The initial determination is simple and straightforward. Commission staff need only examine the descriptions of the "core" educational/informational children's shows listed by each

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See discussion infra Parts II and IV.